

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

APR 18 2006
at 3 o'clock and PM
SUE BRITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: MARIA LEOLANI SPENCER Case Number: CR 03-00450HG-02

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 5/7/2004

Original Offense: Count 4: Unlawful User of Controlled Substances in Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2), a Class C felony

Original Sentence: The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 12 months and 1 day. This term of imprisonment consists of a term of 12 months and 1 day as to Count 4 of the Indictment. Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) That the defendant shall submit her person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition; 4) That the defendant is prohibited from the possession of and use of alcohol; and 5) That the defendant participate in a residential drug treatment program to the extent financially possible.

Type of Supervision: Supervised Release Date Supervision Commenced: 8/19/2005

PETITIONING THE COURT

[✓] To modify the conditions of supervision as follows:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. Shall submit to one drug test within 15 days of the commencement of supervision and at least two periodic drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision (mandatory condition).

CAUSE

The offender is not in violation of her conditions of supervised release; however, based on the offender's history of substance abuse, we are recommending that her conditions be modified as reflected above. Prior to U.S. v. Stephens, the offender was enrolled in random drug testing. However, due to the ruling in *Stephens* (*United States v. Stephens*, 9th Circuit 2005), the Probation Office is limited to three random tests outside of treatment. Drug testing is the most reliable method for monitoring the offender's drug use. The purpose for the modification is so that the Probation Office could continue to conduct random drug testing at the rate of up to eight tests per month. This amount will allow the probation officer to fashion random drug testing designed to detect drug use while not allowing the offender to predict test dates.

As to the offender's adjustment, since her release, she has submitted approximately 27 urine specimens, all of which tested negative for illicit drugs and she has participated in individual counseling sessions with the Drug Addiction Services of Hawaii, Inc. (DASH). She has secured full-time employment at Kilauea General Store in Volcano, Hawaii, and is living in a stable home environment. It is also noted that on 10/20/2005, the offender participated in an assessment for residential substance abuse treatment at Hui Ho'ola in Keaau, Hawaii, per Special Condition No. 5. Correspondence with the Hui Ho'ola counselor revealed that the offender was not appropriate for residential treatment or the intensive outpatient program and their recommendation was that the offender continue with outpatient counseling at DASH.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives her right to a hearing and to assistance of counsel. The offender agrees to the modification of the conditions of supervised release. The

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(7/93)

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offender's attorney and the U.S. Attorney's Office have been notified of the proposed modification and have no objections to the modification.

Respectfully submitted by,



LISA K.T. JICHA
U.S. Probation Officer

Approved by:




GENE DeMELLO, JR.
Supervising U.S. Probation Officer

Date: 4/17/2006

THE COURT ORDERS:

- ☐ No Action
☒ The Modification of Conditions as Noted Above
☐ Other


HELEN GILLMOR
Chief U.S. District Judge

4.17.06

Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

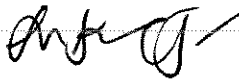
I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify the conditions of supervision as follows:

General Condition: *That the defendant shall refrain from any unlawful use of a controlled substance. Shall submit to one drug test within 15 days of the commencement of supervision and at least two periodic drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision (mandatory condition).*

Witness:



LISA K.T. JICHA
U.S. Probation Officer

Signed:


4/11/06
MARIA SPENCER
Supervised Releasee

4/11/06

Date